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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,735	06/08/2001	Murray Edward Bruce Leighton	THOM-0014	9850

7590

04/22/2004

John W Caldwell
Woodcock Washburn Kurtz Mackiewicz & Norris
46th Floor
One Liberty Place
Philadelphia, PA 19103

EXAMINER

MEREK, JOSEPH C

ART UNIT	PAPER NUMBER
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3727

10

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/857,735

Applicant(s)

LEIGHTON, MURRAY EDWARD
BRUCE

Examiner

Joseph C. Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,3,5-14 and 16-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,3,5-14 and 16-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 2, 3, 5-14, and 16-27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claim 26 and 27, it has not been adequately disclosed that the tag is accessible from the outside of the bag. There is no support for this limitation in the specification. The fact that the drawings show the tag on the outside of the bag does not provide support for this claim limitation. This is a new matter rejection. The remaining claims are included since they stem from rejected claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stolmeier et al (US 6,257,763) in view of Pezzana et al (US 4,481,669). Regarding claims 21, 26, and 27, Stolmeier et al as seen in Figs. 11-13, teaches the claimed invention where 101 is the tag but does not teach the tag being multi-layer or extending only over a portion of the seal length. Pezzana et al as seen in Figs. 5-7, teaches the bag being made from a laminate of several layers. It would have been obvious to employ the laminate of Pezzana et al in the bag of Stolmeier et al to provide a stronger bag or for air imperviousness as taught by Pezzana et al in Col. 1, lines 17-19. The tag 101 of Stolmeier et al is made of the same material as the bag. The tag 101 is M shaped in cross-section. The tapered part extends only over a portion of the bag. . The tag is sealed to the bag at seal lines 102. The inside legs are inside the flanges of the zipper and the outside legs are outside the flanges of the zipper. The inside legs can be lowered so they are withdrawn from within outside legs. The material of the bag has peel seal properties since it is a plastic. It is capable of being sealed in a peelable manner to other plastics. The tag is within the seal, i.e. the zipper since it is within the flanges of the seal. Regarding claim 22, the apex of the tuck has the line of weakness 175 as seen in Fig. 11 of Stolmeier et al. Regarding claim 23, the line of weakness is perforations. Regarding claim 24, see Fig. 7 of Pezzana et al where the three layers are shown. The middle layer is a strengthening layer. It will make the laminate stronger. Regarding claim 25, the middle layer as seen in Fig. 7 of Pezzana will provide heat insulating.

Claims 2, 3, 6-10, 12, 14, and 17-20, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stolmeier et al (US 6,257,763) in view of Pezzana et al (US 4,481,669) and further in view of Ausnit et al (US 3,746,215). Regarding claims 21, 26, and 27, Stolmeier et al as seen in Figs. 11-13, teaches the claimed invention where 101 is the tag but does not teach the tag being multi-layer or extending only over a portion of the seal length. Pezzana et al as seen in Figs. 5-7, teaches the bag being made from a laminate of several layers. It would have been obvious to employ the laminate of Pezzana et al in the bag of Stolmeier et al to provide a stronger bag or for air imperviousness as taught by Pezzana et al in Col. 1, lines 17-19. The tag does not extend over ONLY a portion of the seal length. Ausnit et al as seen in Figs. 1-6, teaches a similar bag with a member for filling that is tapered. It would have been obvious to make the inner member of Stolmeier et al tapered as taught by Ausnit to provide a funnel for direction of the contents as taught by Ausnit et al. The tag 101 of Stolmeier et al is made of the same material as the bag. The tag 101 is M shaped in cross-section. The tapered part extends only over a portion of the bag. The tag is sealed to the bag at seal lines 102. The inside legs are inside the flanges of the zipper and the outside legs are outside the flanges of the zipper. The inside legs can be lowered so they are withdrawn from within outside legs. The material of the bag has peel seal properties since it is a plastic. It is capable of being sealed in a peelable manner to other plastics. The tag is within the seal, i.e. the zipper since it is within the flanges of the seal. Regarding claim 2, the tag is positioned substantially centrally with

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the margin of the bag. The tag is in the center both left to right as well as front to rear.

Regarding claim 3, the tag is within the contour of the bag sides before being withdrawn. Regarding claim 6, see Fig. 11 or 12 of Stolmeier et al. Regarding claim 7, see Fig. 11 of Stolmeier et al, where the line of weakness is 175. Regarding claim 8, the line of weakness is a row of perforations. Regarding claims 9 and 10, the tag is a laminated material and is at least three layers as seen in Fig. 7 of Pezzana et al.

Regarding claim 12, see Fig. 12. The second seal is 130. Regarding claim 14, see Fig. 13, the first seal is the upper zipper 126 and the second seal is the lower zipper 127.

The upper seal is the upper two members and the lower seal is the lower two members.

The tag is sealed to the inside surface of the flanges. The zipper members are male and female. Regarding claim 17, see Fig. 11 of Stolmeier et al, where the tag extends through seal 102. Seal 102 is the second seal. Regarding claim 18, the modified bag of Stolmeier et al discloses the claimed invention except for that the tag is formed separate from the bag. Ausnit et al, as seen in Figs. 2, 4, and 6, teaches that a similar member to the tag can be formed separate from the bag. It would have been obvious to make the tag separate from the bag to provide an alternative way to form the product.

Moreover, it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179. Regarding claim 19, see Fig. 11 of Stolmeier et al where the line of weakness is 175. Regarding claim 20, the tag is located within the contour of the sides of the bag as seen in Fig. 11 of Stolmeier et al.

Response to Arguments

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Applicant's arguments filed 1/8/04 have been fully considered but they are not persuasive. Applicant argues that the M shaped member of Stolmeier et al as modified by Pezzana et al is not a tag since it is an internal tamper evident feature. Applicant repeats the claim language but fails to specify what structure is lacking from the references. Applicant only states that the modified structure of Stolmeier et al is not a tag. The M shaped tamper feature of the modified bag of Stolmeier has all the structure that is required by the claim limitations. Therefore the structure meets the claim limitations.

Applicant's arguments with respect to claims 3, 5-14, 16-20, 26 and 27 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

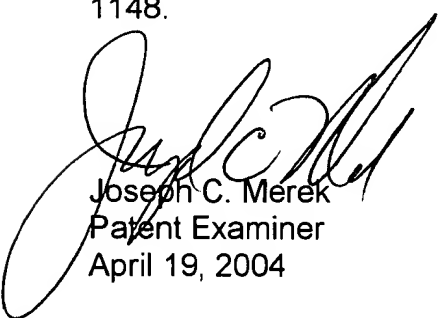
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



Joseph C. Merek
Patent Examiner
April 19, 2004